



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-3065

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180647.

The City of College Station (the "city") received a request for the following information regarding a named police officer:

1. Any and all complaints filed by private citizens, other members of law enforcement, the City of College Station or the City of College Station Police Department against the above referenced officer;
2. Any and all names of persons interviewed in the course of investigating said complaints;
3. Any and all written responses of the above referenced officer to such complaints;
4. Any and all final determinations regarding the above said complaints, including but not limited to, any reductions in pay, demotions in rank, required counseling, or corrective training;
5. Any and all letters advising of any disciplinary action related to said complaints;
6. Proof that the above referenced officer completed any recommended counseling or corrective training as a result of a complaint being filed against him or her;

7. The above referenced officer's employment background;
8. The above referenced officer's original application to become a police officer which was submitted to the City of College Station Police Department;
9. Any and all police academy scores and/or evaluations which are in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
10. Any and all certificates of completion concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
11. Any and all evaluations and/or scores concerning continuing law enforcement training in the possession of the City of College Station Police Department and/or the City of College Station regarding the above referenced officer;
12. The current salary of the above referenced officer;
13. The current amount of overtime pay for the year of 2002 and 2003 accumulated by the above referenced officer as of the date of this request; [and]
14. Any and all specialized units (i.e. drug task force, DWI task force, etc.) that the above referenced officer has been assigned to while employed by the City of College Station Police Department.

You state that information responsive to categories 12 and 13 (the officer's salary and overtime information) has been released to the requestor with certain information redacted pursuant to a previous determination. *See* Open Records Decision No. 670 (2001) (allowing governmental bodies to withhold home addresses, home telephone numbers, personal cellular phone numbers, personal pager numbers, social security numbers, and family member information, of "peace officers" as defined by article 2.12 of Texas Code of Criminal Procedure, without requesting Attorney General decision). Further, you state that you have withheld certain documents related to the officer in question in reliance on Open Records Letter Nos. 2003-1986 (2003) and 2002-7249 (2002). *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to

same governmental body, and ruling concludes that information is or is not excepted from disclosure). Finally, you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information is encompassed by the previous determination issued to the city in Open Records Letter No. 2003-1986 (2003). In that decision, we concluded that the city may withhold information that is encompassed by item numbers 1 through 11 and 14 of the present request under section 552.108(a)(1) of the Government Code without the necessity of again requesting a decision under section 552.301, provided that there is a pending prosecution where the police officer in question is the arresting officer in a DWI case, the officer will be a witness in the prosecution, and the information is the type of information used at trial to determine the credibility of the officer, competency to testify, and qualification as an expert witness. You have demonstrated that the required elements of law, fact, and circumstances specified in the prior ruling are met in this instance. Therefore, the city may withhold the submitted information in accordance with Open Records Letter No. 2003-1986 (2003).¹ See also Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (attorney general decision constitutes second type of previous determination under Gov't Code § 552.301(a) where (1) information at issue falls within specific, clearly delineated category of information about which attorney general has previously rendered decision; (2) previous decision is applicable to particular governmental body from which information is requested; (3) previous decision concludes that specific, clearly delineated category of information is or is not excepted from disclosure; (4) elements of law, fact, and circumstances are met to support previous decision's conclusion that information at issue is or is not excepted from required disclosure; and (5) previous decision explicitly provides that governmental body to which decision applies may withhold information without necessity of again seeking attorney general decision).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹As we are able to make this determination, we need not address your other arguments against disclosure.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 180647

Enc: Submitted documents

c: Mr. Jim W. James
P.O. Box 1146
Bryan, Texas 77806
(w/o enclosures)